RESOLUTIONS.

1. Adjournment of decree-executions on payment of a portion of the decree-debt.

Mr. A. V. Moothedan.—"*The Council recommends to the Government that His Highness the Maharaja may be requested to issue a Proclamation to the following effects:—*

"*Whenever the property of a judgment debtor is proclaimed for sale in execution of a decree of a Civil Court, such sale shall be adjourned for six months or more if the judgment debtor pays to the decree-holder 10 per cent of the whole decree-debt, provided that such adjournment shall not be granted if it is proved to the satisfaction of the Court that the judgment debtor is possessed of sufficient means to pay the whole decree-debt in a lump sum.*"

What I want is, if a certain portion of the decree-debt is deposited the judgment-debtor may be given time to pay the balance. This morning, we have introduced a Bill. If that Bill is passed into law there will be no necessity for a proclamation as required by this resolution. But the difficulty is in the ordinary course of things, several months will be required for this bill to become law. It has to be read three times in Council, referred to the Select Committee, and His Highness will have to give assent. But all that will take some time. During that time some relief should be given by the issue of a proclamation allowing instalment payments. I do not think, there is any difficulty. The Hon'ble Members will agree with me that on the 2nd Kumbham 1111 there was a discussion on this subject when the Hon'ble member for Kattoor moved a resolution for the extension of the moratorium. The Hon'ble the Deputy President, the Hon'ble Member for Pallipuram, the Hon'ble Member for Vytilla and several other members have agreed that if a portion of the decree-debt is deposited in the Court, the judgment-debtor should be given some time. This morning the Hon'ble Member for Pazhanji and the Hon'ble Member for South Ezhuzas have expressed views accepting this principle. With regard to the Chief Court circular my submission is it is totally ineffective. I have to bring to the notice of the Government one specific instance. The fact is that in the case O. S. 52/10 of the Irinjalakuda Munsiff's Court, there was a decree about 6 months, old. A judgment-debtor after depositing about 15 per cent of the decree debt applied for some time to pay the balance; but the Munsiff refused to give any time and the sale took place.

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Does not this instance show that the Chief Court Circular is not so effective or adequate as assured by the Secretary to Government on the 2nd Kumbham 111? I don't question the discretion of the Munsiff in that case. But any how I don't wish to give any discretion to the presiding officer, when a judgment-debtor pays say 10 per cent of the debt. A sale must be adjourned when 10 per cent of the debt is paid. That is my object. The judgment debtor should not be subject to any further anxiety as to whether the court will grant an adjournment or not, when 10 per cent of the debt is paid. When this condition is satisfied, the judgment debtor should get an adjournment as a right. We want to fetter the discretion of the judicial officer in that way.

Dr. A. R. Menon.—Sir, I have great pleasure in seconding this resolution and I think it would not be opposed by the Government. It is only a moderate measure only asking for six months' time. The general tendency of the Courts is so far as Government is concerned, to meet the representations of this House and the people. This is not going to do anyone any danger. As the mover has said, no property will be sold for 6 months if a proclamation to this effect is issued. I do not see any reason why it should not be accepted by the Government. I hope this will be accepted by the Government.

Mr. P. Govinda Menon.—Sir, I support the principle underlying this resolution. The difficulties of the judgment debtors are not fully met by the Chief Court Circular enjoining upon the lower Courts to adjourn the sales when a portion of the decree debt is paid. As a matter of fact, from my experience I can assert that in almost all cases sales are being adjourned when a fraction of the decree-debt is being deposited. But this practice is not ensuring generally to the benefit of judgment debtors for two reasons. Firstly whatever be the amount of the decree-debt, the judgment debtor has to pay heavy costs. Because of the depression, this is a great burden on the judgment-debtors. Secondly the sales are generally stopped without any further direction as to the time for which it is being stopped so that unscrupulous decree-holders, as soon as the sale is stopped put in further execution petitions the next day so that within two or three months the property is again proclaimed for sale. The execution costs therefore swell out of proportion to the original debt. That is the real difficulty in the matter. Also the judgment-debtors come to courts without any certainty. They do not know whether they

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are going to get an adjournment of the sale or not. Therefore, often they have to engage Vakils to pray for an adjournment. If some such rule as contemplated by the resolution is put into force, then the judgment debtors can be sure that if they tender a fraction of the decree-debt they will get an adjournment of the sale as a matter of course and they could thereby save a lot of money. Under the present circumstances in the land, I fear 10 per cent is a bit too much. I would therefore request the hon'ble mover to reduce that percentage to 5. Thereby no difficulties are going to happen. 5 per cent will be a sufficiently good fraction of the decree debt.

In this connection, I have to say one or two words about a certain sale in the Irinjalakuda Munsiff's Court about which the Hon'ble Member for Chalakudi, refers to, too often. I had occasion to be associated with that case. Therefore, I think it would be proper that the real facts of the case are placed before this house. It was a case in which the prayer for adjournment was made not by the original debtor but by the assignee of the property who took the assignment without paying down anything in cash.

Mr. A. V. Moothedan.—That judgment debtor who deposited the money was a defendant in the suit.

Mr. P. Govinda Menon.—The Hon'ble Member from Chalakudi is not correct. The Hon'ble Member appeared in that case only for the adjournment of the sale whereas I conducted the case for the defendant throughout. The person who put in the written statement, and applied for the adjournment of the sale was not the original debtor but the assignee of the property who took the assignment with the mortgage amount reserved. Without paying a single pie the assignee was enjoying the property which was in his possession. He put in a written statement and produced a receipt alleged to have been given him by the decree holder which was found to be false. The trial of the suit was prolonged for more than one year by adopting obstructionist tactics well known to lawyers and litigants. After the decree the property was proclaimed for sale. I do not remember whether it was twice or thrice, it was more than once. After enjoying the usufructs of the property, for so many years without paying a single pie, he wanted an adjournment of the sale. It was under these circumstances that the prayer for adjournment was disallowed and the property sold.

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When the property was sold, a direction was made by the Munsiff that if within three months the decree debt be paid without the usual five per cent commission, the sale would be set aside. Therefore, I submit to this House that a very wrong impression has been created among the Hon'ble Members of the house as to the conduct of the court in this case. I do not know personally what the contents of the Chief Court circular are or whether it is being violated or not. My only submission is that the sale in O. S. 52 of 1110 of the Irinjalakuda Munsiff's Court is certainly not an unjust act it is made out to be.

Coming back to the original resolution I believe that the matter cannot be left entirely to the discretion of the court, not because as the Hon'ble Member for South Ezhuvas put it, the judicial officers of the State have no sufficient sense of duty.

Mr. K. Ayyappan.—I did not say that. I said in a country where the sense of duty has not developed both among officials and non-officials (laughter).

Mr. P. Govinda Menon.—It is wrong and definitely harmful to leave the judgment-debtors in a condition of uncertainty. Because of that un-certainty they will have to engage vakils to plead their case and they will have to pay for them. This house may not be aware that for an adjournment of a sale in the Munsiff's Court, the judgment-debtor will have to spend at least 8 or 9 rupees which does not go towards the satisfaction of the decree-debt. In the District Court the amount will be greater. Rs. 5 will have to be paid as day-cost, there is the vakalath, the petition, and something has to be paid for his own vakil also. If a resolution like the present one is passed and accepted by Government and proper advice is given to the Lower Courts by the Chief Court, then without any state of uncertainty he could straight-away go to the court and offer his money, and the sale will be adjourned, and there will be a partial discharge of the decree-debt. In these times of depression, when it is difficult for judgment-debtors to raise even two or three rupees, some sort of relief ought to be given. I request the Hon'ble Mover of the resolution to reduce 10 per cent to 5 per cent.

Mr. Thomas Manjuran.—The principle underlying this resolution, as Hon'ble Members are well aware has been recognized by the Chief Court long ago and the Chief Court was pleased to issue a circular. It is very refreshing to note that the only instance of the so-called violation of that longstanding circular has now been exploded by the Hon'ble Member for Adoor. All impartial membrs who heard the Hon'ble Member

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for Adoor will be convinced that the case in hand was one pre-eminently suited for exercising the power of sale existing in the Munsiff. Here was a fraudulent party—if the version given by Hon'ble Member for Adoor was correct, and it cannot be incorrect because he was the Vakil who conducted the case—the assignee of the property who was in possession and who had paid nothing by way of purchase money. He contested the litigation with a false receipt, protracted it for over a year, enjoyed the profits all along and then eventually when the property was put for sale—.

Mr. K. Ayyappan.—We do not want your explanation.

Mr. Thomas Manjuran.—It is very remarkable that the 40 non-official Members of this house were able to collect only one instance of the violation of the circular and that one instance, on examination was found to be a mere bubble.

Mr. K. M. Ibrahim.—We shall give a hundred instances.

Mr. Thomas Manjuran.—Why don't you produce them? While the Government are fully sympathetic with the debtors in the State while the Chief Court has issued the valuable circular, all such facts should be of great value. We have got the experience of some Hon'ble Members given out in this house that the circular has been beneficially working for a long time and while that circular has been beneficial the question is whether there is any case for any more drastic action of the Government. The resolution, as it stands, I regret, cannot be accepted by the Government. It is far too inelastic.

Dr. A. R. Menon.—There is a proviso.

Mr. Thomas Manjuran.—We will assume that the judgment debtor is not able to pay, or that the security for the debt consists of a property mainly timber land. Supposing the debtor deposits the 10 per cent and gets the sale adjourned and then begins to remove the timber in the meanwhile what will be the value of the property?

Mr. P. Kumaran Ezhuthassan.—A receiver could be appointed.

Mr. Thomas Manjuran.—What will be the advantage gained by the debtor if the property is taken away by the receiver?

Dr. A. R. Menon.—Counter injunctions be served.

Mr. Thomas Manjuran.—In the case of a paramba in the Taluq to which the Hon'ble Member belongs whose value is

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based on timber, by the time the injunction is investigated, the man and the timber may both disappear. Whether the available security is altogether inadequate or whether the adequate security dwindles, it is not a matter for arbitrary interference either by the Court or by the Government. It is a matter for the exercise of judicial discretion by the presiding officers in the Courts. Even if no money is deposited, if a bona fide case is made out the judicial officer can always say under the Civil Procedure Code, that the sale is adjourned and the Chief Court has also recommended them to do so. Now I am putting to the Hon'ble Members the question that if there were cases where the Circular was repeatedly violated can it ever be expected that the 40 vigilant non-official Members of this house would keep quiet over the matter. They were able to find out only this bubble of a case. It will not be a compliment for the acumen, the energy and intelligence of the Hon'ble Members of this House to say that they have failed to collect instances. I won't believe it. The irresistible conclusion is that such instances do not exist. The Hon'ble Members will hence realise that rather than passing a resolution like this the best thing would be to leave the matter where it is. There is a beneficial circular and it is being properly used by the judiciary and nothing better can be desired.

Mr. P. Kumaran Ezhuthassan.—What about the day fees?

Mr. Thomas Manjuran.—I know the existence of such a practice. It is a matter which has to be entirely left to the discretion of the judicial officers.

Mr. President.—That is the main point.

Mr. T. S. Narayana Ayyar.—The discussion in this House on this subject will be forwarded to the Chief Court for such action as they deem desirable in the matter.

Mr. A. V. Moothedan.—On the assurance given by the Secretary to Government, I beg leave of the House to withdraw this resolution.

Resolution was, by leave, withdrawn.

2. Government officers not to be allowed to receive public Entertainments.

Mr. E. Ikkanda Warriar.—"*This Council recommends to the Government to issue strict orders that the Government officers*

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